

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) CRIMINAL CASE NO. CCB-17-226
ERIC WAYNE GRINDER,)
Defendant.)
_____)

Friday, May 24, 2019
Courtroom 7D
Baltimore, Maryland

BEFORE: THE HONORABLE CATHERINE C. BLAKE, JUDGE

SENTENCING

For the Plaintiff:

Paul Riley, Esquire
Paul Budlow, Esquire
Assistant United States Attorneys

For the Defendant:

Elizabeth Oyer, Esquire
Kirstin Hopkins, Esquire
Assistant Federal Public Defenders

Also Present:

Special Agent Richard Federico, HSI
Manisha Garner, U.S. Probation Officer

Reported by:

Douglas J. Zweizig, RDR, CRR, FCRR
Federal Official Court Reporter
101 W. Lombard Street, 4th Floor
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P R O C E E D I N G S

(9:34 a.m.)

THE COURT: Good morning, everyone.

MS. OYER: Good morning, Your Honor.

MR. RILEY: Good morning, Your Honor.

THE COURT: You can be seated.

Call the case, Mr. Riley.

MR. RILEY: Yes, Your Honor.

Calling the case of United States of America versus
Eric Wayne Grinder. That's Criminal Number CCB-17-226.
Assistant U.S. Attorney Paul Riley and Assistant U.S. Attorney
Paul Budlow on behalf of the Government.

With us at counsel table is Special Agent
Richard Federico of DHS/HSI.

We're here today, Your Honor, for the defendant's
sentencing.

I'd also like to note, for the record, Your Honor,
that the uncle of Alisha Grinder, the minor victim's mother, is
present in the courtroom today.

THE COURT: All right. Certainly.

Do you know at this point whether anyone wishes to be
heard from by way of --

MR. RILEY: No.

THE COURT: I have the victim impact statement. I
have read that, but --

1 **MR. RILEY:** At this time, no, Your Honor.

2 **THE COURT:** Okay. All right. Thank you.

3 Good morning.

4 **MS. OYER:** Good morning, Your Honor. Liz Oyer and
5 Kirstin Hopkins for Mr. Grinder, who is present to our right.

6 **THE COURT:** Okay. Thank you. You can be seated.

7 All right. There are obviously a number of issues.
8 I've reviewed, of course, the presentence report and various
9 sentencing memoranda and letters and exhibits from counsel.

10 Unless anyone has any other thoughts, I assume that we
11 should just proceed to discuss, to the extent anyone wants to
12 be heard in addition to what they've filed, on the various
13 guidelines issues that are in dispute so that I can come to an
14 advisory guidelines calculation.

15 Has anything changed? Any change in your violent
16 disagreements?

17 **MR. RILEY:** The Government is happy to submit on the
18 papers in terms of the guideline disputes, Your Honor.

19 The Government would ask this Court to make factual
20 findings consistent with the guideline enhancements that the
21 Government is seeking in this case.

22 I'm happy to present argument concerning those, if
23 Your Honor wants to hear them.

24 **THE COURT:** Okay.

25 **MS. HOPKINS:** Your Honor, I'm also happy to submit on

1 the vast majority of what we've already briefed.

2 The only thing that I would like to be heard on are
3 the Government's objections for the facts that they're trying
4 to establish, and that would be for the four-level enhancement
5 for a sex act and also the two-level vulnerable victim
6 enhancement.

7 **THE COURT:** Okay. All right. Well, let me -- thank
8 you. You can be seated.

9 Let me just see if we -- actually go through some of
10 these, then. I'm trying to see what we are in agreement on and
11 what we are not.

12 All right. Seems to me that -- of course, we have
13 nine separate counts here.

14 Counts 1 through 6 are the production of
15 child pornography counts.

16 Counts 7 and 8 are possession of child pornography.

17 9 is the witness tampering.

18 I think we are in agreement on -- let me tell you what
19 I think you're in agreement on.

20 For example, starting with Count 1, we start at an
21 offense level of 32. I believe it's agreed that there is an
22 increase of four because the victim was under 12; an increase
23 of two because a sex act was involved; and an increase of two
24 because the victim was in the care of a parent. So that comes
25 to a total of 40.

1 The same -- and I'm not reaching the ones that the
2 Government wants to add to that at the moment.

3 The same level is reached as to Counts 2, 3, and 4.

4 For Counts 5 and 6, it appeared to me that the total
5 offense level was a 38, as the presentence report calculated
6 it.

7 So there are six units on that 1 to 6, the first six
8 counts.

9 According to the presentence report and the
10 Government, they are not grouped, so you have an offense level
11 of 40 and an increase of five for the additional units.

12 The defense thinks that they should be grouped.

13 On Count 7 -- Counts 7 and 8 are grouped. They are a
14 lower offense level. Starts at an 18. There is an increase of
15 two, again, because of the victim being under 12; an increase
16 of two for use of a computer; an increase of two for
17 obstruction of justice, being a total of 24.

18 But that's essentially disregarded under the grouping
19 anyway, because the level is so much less than it is for the
20 first six counts.

21 And I believe Count 9 was also just included in that
22 grouping, essentially, the 7, 8, and 9 together.

23 So the first relevant dispute that I think has been
24 fully briefed is the question of grouping under 3D1.2.

25 And while it is correct that production of

1 child pornography does not group under 3D1.2(d), which is
2 reflected in the presentence report, it is still necessary to
3 evaluate 3D1.2(b), which relates to whether there is the same
4 victim and two or more acts that are part of either a common
5 scheme or share the criminal objective.

6 So there can be grouping under 3D1.2(b), even if not
7 under Section (d).

8 And I, among other cases, looked at the Pitts --
9 P-I-T-T-S -- case from the Fourth Circuit, 176 F.3d 239.

10 However, among the factors to consider, even under
11 (b), is whether this is essentially one composite harm or
12 separate harms.

13 And examples that have been given of what would be
14 considered separate harms are robberies on different days,
15 rapes on different days.

16 It is my finding for guidelines purposes, based on all
17 the material and cases that you all submitted, that these do
18 not group, that these are separate harms inflicted on at least
19 six separate occasions, and I think the presentence report is
20 correct in not grouping them.

21 So that would bring me from a 40 to a 45.

22 There are two additional enhancements that I think
23 logically need to be considered at this point, which are your
24 requested increase of two for the vulnerable victim and another
25 one which I'm not recalling at the moment.

1 **MR. RILEY:** Your Honor, if I may, it's the enhancement
2 pursuant to 2G2.1(b)(2)(B), and the Government is seeking this
3 enhancement based on the fact that it's the Government's
4 position, based on the evidence put before the Court, that this
5 defendant drugged or otherwise rendered the minor victim
6 incapacitated and then engaged in a sex act with her.

7 **THE COURT:** And it's the same -- that is the same
8 basis for your vulnerable victim enhancement, is it --

9 **MR. RILEY:** No, Your Honor. The enhancement pursuant
10 to 2G2.1(b)(2)(B) reflects the -- the specific way in which a
11 sex act was conducted.

12 So the focus more with respect to that enhancement is
13 the sex act and the way the sex act could be carried out; i.e.,
14 drugging the victim.

15 It's true that -- it's true, Your Honor, that the
16 Government is relying upon the vulnerable victim enhancement
17 with respect to the sort of -- the drugging evidence before the
18 Court too.

19 But obviously that enhancement is -- the focus on that
20 enhancement is the particular vulnerability of the victim in
21 that statement -- in that state, having been drugged.

22 **THE COURT:** Okay. And, Ms. Hopkins, you wanted to be
23 heard on those issues factually.

24 **MS. HOPKINS:** Thank you, Your Honor.

25 Our position is that the Government has not met its

1 burden of proving that Mr. Grinder drugged the minor victim.

2 Of course, the standard here is by a preponderance of
3 the evidence, but the Government does not meet that standard.

4 The Government is attempting to prove these facts by
5 attaching a number of exhibits to its sentencing letter. There
6 wasn't sworn testimony to any of this at trial. And this just
7 simply isn't the way to be proving facts for enhancements at
8 sentencing.

9 And, moreover, these exhibits don't even establish
10 that Mr. Grinder did drug the victim.

11 The Government points out the fact that Mr. Grinder
12 was a drug user. But the victim never said that Mr. Grinder
13 gave her drugs. No one ever said that they saw Mr. Grinder
14 give her drugs.

15 So him being a drug user, that doesn't establish that
16 he gave drugs to the victim.

17 And the Government is also relying on Ms. Grinder's
18 testimony when she said that Mr. Grinder gave the victim
19 cough medicine and that the victim didn't have a cough.

20 But, for one, Ms. Grinder's credibility is also
21 compromised here, at least so far as her ability to actually
22 perceive what was going on, because, as the Government
23 recognizes in its sentencing letter, Ms. Grinder was also using
24 drugs at the time of these offenses.

25 But another piece that's really important that comes

1 through in the Government's sentencing letter is this exhibit
2 from the Maryland State Police Lab where they test the cold
3 medicine, they test the dropper -- which, as I understand it,
4 the Government is saying that's how Mr. Grinder was drugging
5 the victim.

6 And after testing them, it came to be that there was
7 no controlled substances in either the cough medicine or this
8 dropper bottle.

9 **THE COURT:** Isn't it also -- I mean, the part about
10 the cough medicine is from November of 2016, if I recall. I
11 mean, that's part of what led to the discovery.

12 **MS. HOPKINS:** Yes.

13 **THE COURT:** And as opposed to in connection with any
14 specific date in Counts 1 through 6.

15 **MS. HOPKINS:** That's true. And I do want to talk
16 about the actual counts themselves, because we did -- at trial
17 we all had the opportunity to see all of those produced images
18 and the produced videos.

19 And, as we know, we don't see the minor victim's
20 entire body, we don't see her face, so we can't know whether
21 she was awake or not, whether she was drugged or not during
22 this.

23 And I think the other piece that the Government is
24 relying on here is just Mr. Grinder's search history.

25 But what he's searching on the Internet without more

1 isn't enough to establish that he drugged the minor victim.

2 **THE COURT:** Okay. Thank you.

3 Mr. Riley.

4 **MR. RILEY:** Your Honor, I think there's ample evidence
5 that this defendant drugged the minor victim. Whether he
6 drugged her by simply Robitussin, Your Honor, whether by
7 clonazepam, whether by U-4770.

8 Counsel referenced the drug test that came back from
9 the Maryland State Police Laboratory. That drug test did find
10 that U-4770 was a controlled substance that was found in that
11 house.

12 With respect to the standard, the standard of proof at
13 sentencing, obviously the Government simply has to prove or
14 establish the sentencing enhancement by a preponderance of
15 evidence based on evidence with a sufficient indicia of
16 reliability.

17 I think -- not to get into specifics now -- I think
18 there is sufficient indicia of reliability with respect to all
19 of the attachments attached to the Government's sentencing
20 memorandum.

21 And if I can just address a couple of the specific
22 pieces of evidence that support the Government's position that
23 this defendant did drug the minor victim before sexually
24 abusing her.

25 First off, as counsel mentioned, and as everyone

1 knows, the defendant was -- was a drug user during the relevant
2 time period.

3 His wife testified that on the night that M.G.
4 disclosed the abuse to her, she encountered the defendant in
5 the hallway outside M.G.'s bedroom as she was leaving the
6 bedroom.

7 He asked her -- she asked the defendant what he was
8 doing, and he said he was giving M.G. cough medicine.

9 Ms. Grinder further testified that M.G. didn't have a
10 cough, wasn't sick that night.

11 With respect to the produced images of pornography
12 that the Government is seeking to have the Court apply this
13 enhancement to, the child does not move in any of the videos in
14 which she is being abused.

15 And one of the videos in particular, the video in
16 which there is a first penetration with a finger and then the
17 use of a vibrator, that meant -- that video is several minutes
18 long.

19 During that video, the child does not move, and I
20 think that supports the Government's perspective that she's
21 incapacitated, drugged, not aware of what's happening to her
22 during the abuse.

23 Moreover, Your Honor, there are the search terms.

24 There are numerous search terms from the
25 DuckDuckGo application that support the Government's theory

1 that this defendant drugged the minor. He searched
2 "drug teen sex," "drugged virgins," "drugged raped teens,"
3 "passed-out teens."

4 And even, Your Honor, how to -- how to potentially
5 drug someone with Ambien. There are searches concerning
6 slipping a girl Ambien, a cough syrup enema, forcing your kid
7 to take medicine.

8 There are also searches concerning chloroform, other
9 agents that would knock somebody out.

10 We think that's powerful evidence that this defendant
11 was plotting/planning his abuse, and the specific method of his
12 abuse would be drugging the child.

13 What's notable, too, about the search terms,
14 Your Honor, is that the defendant searched things and then he
15 did those things.

16 For instance, there's a search concerning the
17 vibrator; and, as we know, the defendant used the vibrator on
18 the minor victim. I think that's -- there is ample,
19 sufficient -- sufficiently reliable evidence for this Court to
20 find that that enhancement applies.

21 **THE COURT:** Okay. Anything else?

22 **MS. HOPKINS:** No, Your Honor.

23 **THE COURT:** Okay. All right. Well, I appreciate it.
24 I understand the Government's argument, but I'm not going to
25 apply those two additional enhancements.

1 I don't think factually that there is enough reliable
2 evidence in front of me to determine that on any of these
3 specific occasions in Counts 1 through 6 she actually had been
4 drugged with something that would qualify under the guidelines.

5 There are various reasons, I can imagine, why she
6 would not be moving.

7 And the fact that there are drugs in the house is just
8 not sufficient. And, as I indicated, I don't see her face in
9 these pictures.

10 There are indications also that she seems to have been
11 aware, at least from what statements that she'd made, that she
12 was abused while she was asleep. That's all generally there.

13 But, again, I don't find anything that is sufficiently
14 specific as to a particular count to make it reasonable to
15 apply those two additional enhancements.

16 Okay. That gets us to the 4B1.5(b) pattern of
17 activity remaining.

18 Anybody want to be heard on that?

19 **MS. HOPKINS:** No, Your Honor.

20 **MR. RILEY:** No, thank you.

21 **THE COURT:** Okay. All right. Well, I think that
22 the -- under the clear weight of what published authority there
23 is and the plain language of 4B1.5(b), I do think that this
24 applies.

25 It applies when there is a pattern of activity,

1 meaning on at least two separate occasions, the defendant
2 engaged in prohibited sexual conduct with a minor.

3 There is nothing I read that mandates it being more
4 than one minor. The plural used in the background I think is
5 just a general discussion overall of the guideline.

6 The guideline itself does not have that limitation,
7 nor, frankly, does it have a limitation about continuing danger
8 requiring anything more than the showing of multiple
9 violations.

10 I think particularly -- again, there are multiple
11 cases that could be cited. I did not find anything where the
12 Fourth Circuit had explicitly decided this in a published
13 opinion. Perhaps I missed it. If I did, you all can tell me.

14 There were some unpublished. And there's a -- I
15 think, among the cases that support application of 4B1.5(b),
16 the Sixth Circuit case of U.S. versus Brattain,
17 B-R-A-T-T-A-I-N, at 539 F.3d 445, as well as the Tenth Circuit
18 case of U.S. v. Evans, at 782 F.3d 1115, explain this.

19 I think the purpose behind the guideline and the clear
20 language of the guideline do make it reach multiple sexual
21 acts, production of child pornography acts, even with the same
22 victim.

23 So that then gets us, I believe, to an offense level
24 of 50, which, of course, is reduced to an offense level of 43,
25 because that's the highest category that there is.

1 Mr. Grinder has no criminal history, so it's a 43-I,
2 which, of course, the guideline range is a life sentence.

3 The guidelines, however, are only one factor. And I'm
4 happy to consider the other factors under 3553(a) that everyone
5 would like to address.

6 Did I leave something out? Please go ahead.

7 **MS. HOPKINS:** I don't believe you addressed acceptance
8 of responsibility.

9 **THE COURT:** Oh, you're absolutely right. Thank you.

10 **MS. HOPKINS:** We're happy to rest on what we
11 submitted. But I'm also happy if Your Honor wants to hear
12 more.

13 **THE COURT:** No. I am ready to rule on that as well.

14 Does the Government want to be heard on the acceptance
15 of responsibility?

16 **MR. RILEY:** We're happy to submit on our papers,
17 Your Honor.

18 **THE COURT:** Okay. All right. So the two-point
19 reduction for acceptance of responsibility, it is generally not
20 applicable when someone has gone to trial and when there is
21 also an obstruction of justice. The burden is on the defendant
22 to show clear acceptance and extraordinary circumstances. I
23 think it's absolutely clear the defendant has shown that in
24 this case.

25 I'm aware, of course, there was obstructive conduct

1 that's the subject of Count 9, among other things. That was
2 well in advance of the trial itself.

3 I think that Mr. Grinder did virtually everything in
4 his power to accept responsibility once he was past that point.

5 We had, as everyone will recall, a willingness to
6 plead guilty to all the counts of the indictment on the
7 condition of preserving the appellate rights relating to the
8 search that was refused.

9 There was an offer to essentially have stipulated
10 facts and a bench trial that was refused.

11 The only reason there was a jury trial in this case is
12 because that was the Government's choice. It's the
13 Government's right.

14 But Mr. Grinder -- I think these are extraordinary
15 circumstances, and he did everything possible to accept
16 responsibility.

17 So thank you. That's two levels off of 50, so it's
18 48. But it still comes to a 43 with a criminal history
19 category of I at the end of the day.

20 Anything else? Anything I have left out?

21 **MS. HOPKINS:** No, Your Honor.

22 **MR. RILEY:** No, Your Honor.

23 **THE COURT:** Okay. All right. Then I'm back to
24 3553(a).

25 Mr. Riley.

1 **MR. RILEY:** Yes, Your Honor.

2 Your Honor, a sentence of at least 90 years'
3 imprisonment is appropriate in this case.

4 **THE COURT:** That's essentially a life sentence,
5 wouldn't you say, Mr. Riley?

6 **MR. RILEY:** Yes, Your Honor.

7 Child rape is among, if not the worst, crime
8 imaginable. This defendant is a child rapist. He didn't just
9 exploit his own daughter. He didn't just take pictures of his
10 own daughter. He made his own daughter perform sex acts on
11 him, and he did so when she was under the age of 10, 7, 8, 9
12 years old.

13 This defendant adopted M.G., the minor victim in the
14 case.

15 M.G. and her mother trusted this defendant, and the
16 defendant abused that trust -- that trust -- sexually abused
17 that daughter -- his daughter. And he filmed it.

18 And this defendant was seeking out child pornography
19 well before he even met Alisha Grinder, the victim's mother in
20 this case.

21 And after he met Alisha Grinder, he finally had the
22 opportunity to act on what he was interested in, and he did so
23 and he did so repeatedly.

24 The nature and circumstances of this offense are,
25 simply put, horrific, Your Honor.

1 Also particularly notable is the betrayal of trust
2 here.

3 The defendant's actions reflect a betrayal of trust in
4 really the most severe way.

5 As I said, this defendant adopted M.G. He essentially
6 told her and he told her mother that he would be there for her.

7 And Alisha Grinder, M.G.'s mother, placed her trust in
8 the defendant. Not hesitating to leave her daughter at home
9 with him while she was working late Sunday nights. Not
10 hesitating to leave the child in her [sic] care when she was
11 recovering from multiple surgeries.

12 And Ms. Grinder's victim impact statement reflects the
13 trust that she put in this defendant.

14 And I do want to read a little bit of this out loud,
15 Your Honor, particularly because this -- Ms. Grinder is not
16 here today.

17 **THE COURT:** All right.

18 **MR. RILEY:** Ms. Grinder writes, [reading]: Once we
19 moved in together, Eric is the one that went to the courthouse
20 to find out what needed to be done so he could adopt M.G.

21 [Reading]: He even went to the courthouse with M.G.'s
22 biological father and I when he terminated his rights, assuring
23 Ricky that M.G. was in good hands. This is the standup guy
24 that I thought I was marrying.

25 And Ms. Grinder's statement, of course, also reflects

1 the extreme betrayal of trust by this defendant. She writes
2 that [reading]: The trust had been given. Why would I
3 second-guess my husband after all the good things he had done
4 since we met? The things I can so clearly look back now as
5 red flags were missed during the years we were together, such
6 as the time when M.G. was about 7 and she was taking a bath and
7 told me she broke it while pointing to her vagina. Or my
8 barely-9-year-old was bleeding one morning, and I just assumed
9 she had her period. She didn't.

10 [Reading]: Also, very often on Monday mornings, my
11 daughter looked sick and acted sick. She stayed home a lot on
12 Mondays.

13 [Reading]: Obviously now I know that Sunday nights
14 were torture for her, the one night a week I work late.

15 Even more significant than the betrayal to
16 Alisha Grinder is the betrayal of trust to M.G.

17 It was the defendant's job to protect M.G. He didn't
18 do that. And so the very person that should have been
19 protecting M.G. from abuse was the one abusing her.

20 He manipulated her desire for affection from her
21 adoptive father, and he took advantage of it. He groomed her
22 and he repeatedly sexually abused her.

23 There's been a lot said already in the parties' papers
24 with respect to the defendant's acceptance of responsibility.

25 And counsel wrote in their sentencing memo that the

1 defendant attempted to plead guilty prior to trial, and he went
2 to trial only to preserve his right to appeal -- the right to
3 appeal the denial of his suppression motion.

4 And Your Honor has made your finding with respect to
5 the guideline reduction as to acceptance of responsibility.
6 The Government recognizes that. And certainly it is the
7 defendant's right to go to trial to preserve his appellate
8 rights.

9 But from a layman's perspective, Your Honor, what the
10 defendant did here is to try to escape acceptance of
11 responsibility. He wants to take this case up on appeal. He
12 wants to prevail in the Fourth Circuit. He wants to have the
13 electronic evidence against him suppressed.

14 And he wants to walk. He wants to get out of prison.
15 That's the opposite of the acceptance of responsibility, from a
16 layman's perspective.

17 **THE COURT:** Of course, you are not a layman,
18 Mr. Riley.

19 **MR. RILEY:** I am not, Your Honor. And I would like to
20 make one more point with respect to acceptance.

21 If this defendant truly accepted responsibility for
22 the factual conduct that he did, he would have pled guilty to
23 the state rape charges against him, which were not dependent on
24 electronic evidence, Your Honor. He didn't do that. He
25 doesn't want to accept punishment for what he did.

1 Relatedly, Your Honor, this defendant has shown no
2 remorse for his actions.

3 Ever since his arrest in this case, this defendant has
4 been focused solely on himself and the punishment that he
5 faces, not the harm he caused to M.G. Not the harm he caused
6 to her mother.

7 The witness tampering, obstruction of justice reflect
8 this lack of respect -- of acceptance of responsibility.

9 There's a letter to his sister asking his sister to
10 contact M.G. and tell -- tell -- get M.G. to say that she took
11 the produced images of child pornography, not him, and
12 essentially guilt-tripping her, telling her that he won't be
13 able to see his boys again if she doesn't recant her story.

14 There's a letter to -- a letter concerning -- to his
15 family member concerning asking his family member to cut the
16 brake lines associated with a vehicle that belonged to
17 Alisha Grinder's family.

18 And then, of course, there are the repeated phone
19 calls and letters to Alisha Grinder herself, trying to
20 manipulate her.

21 There hasn't been -- the Government hasn't seen any
22 recognition by this defendant of the harm he has wrought on
23 either Alisha Grinder or M.G. No remorse.

24 Now, Defendant also argues that his sexual abuse of
25 his daughter and the production of child pornography was

1 somehow an aberration, an anomaly, something that was
2 completely out of character for him. And there's also the
3 suggestion that the abuse was perhaps a result of his drug
4 addiction.

5 The Government submits that this evidence or this
6 argument, Your Honor, is belied by the record.

7 As I said earlier, this defendant has been interested
8 in sexually -- sexually interested in prepubescent minors for a
9 long time. He has been seeking out child pornography, even
10 before he met M.G.'s mother.

11 And his repeated abuse of M.G. over a lengthy period
12 of time is a pattern that was by design. He carefully planned
13 his abuse of M.G. and he conducted research on how to abuse
14 her; how to have sex with her while she was sleeping; how to
15 get her interested in sex; how to jump-start puberty in her;
16 and even how to get rid of Alisha Grinder, his wife, for the
17 weekend or otherwise.

18 His actions in this case were the result of careful
19 deliberation, premeditation, and thought, hardly an aberration,
20 hardly an anomaly.

21 The defendant also argues that this case lacks certain
22 of the aggravating factors that are sometimes present in
23 production of child pornography cases.

24 The defendant states that this abuse was limited to
25 just one victim.

1 But the defendant, of course, ignores the fact that
2 the victim in this case was his own daughter, his adopted
3 daughter, someone entrusted to his care.

4 And there are other aggravating factors as well, and
5 I've touched on them briefly earlier: The child's young age
6 during the time of the abuse and the fact that he was -- that
7 the abuse was so carefully planned and premeditated.

8 Regarding mitigation, the defendant essentially argues
9 that despite not having a relationship with his biological
10 father and despite having a drug addiction, he was a dedicated
11 father, family member, and friend.

12 Maybe this is a better way to look at it, Your Honor.
13 Despite his history of being a dedicated father to four of his
14 children and a dedicated family member and friend, the
15 defendant raped his daughter, his other child, repeatedly, and
16 he filmed it.

17 As for the defendant's drug abuse, the Government does
18 not consider that to be a significant mitigating factor. It's
19 not as if this defendant abused M.G. one time in a drug-addled
20 haze, Your Honor. He carefully planned it, researched it, and
21 carried out that plan over a significant period of time.

22 And there are plenty of people who are suffering with
23 addiction issues who don't sexually abuse their children and
24 film it.

25 Finally, Your Honor, I want to talk a little bit about

1 the impact of the defendant's actions on the victims in this
2 case. I touched on this a little bit at the outset.

3 The defendant's abuse of this child has forever
4 changed her life and her mother's life, and they will be living
5 with the psychological and emotional consequences of his
6 actions for years to come.

7 Both have been in and out of therapy already as a
8 result of the abuse, and that therapy will undoubtedly
9 continue.

10 Regarding Alisha Grinder, she's devastated. She's
11 devastated not only by the horrors the defendant afflicted on
12 her daughter, but also by the fact that she thought she knew
13 this -- she thought she knew the defendant. She thought he was
14 a good man. She loved him.

15 But in reality, Your Honor, she was targeted by this
16 defendant. All the nice things the defendant did for her early
17 in their relationship, all the trust that he built up was part
18 of a plan.

19 As Ms. Grinder put it in her statement, all of these
20 things were done for an ultimate goal, and that goal was to get
21 access to her young daughter.

22 And the harm that Ms. Grinder suffered as a result of
23 her husband's abuse of her daughter was further aggravated by
24 the fact that she was dealing, for a significant period of
25 time, with phone calls and letters from this defendant trying

1 to manipulate her.

2 As for the harm to the child, she has been rocked by
3 what she has had to endure as a result of this, the actions of
4 this defendant.

5 The Government obviously included the video interview
6 of her after -- after she was -- after she disclosed the abuse
7 to her mother.

8 And you can see in that interview the trauma that she
9 is undergoing, the tears, almost her inability to communicate
10 with her interviewers about what happened to her at the hands
11 of her father.

12 The Government submitted the reports from the
13 sexual -- sexual assault forensic examination as well. She was
14 so petrified and terrified after the first examination, the
15 doctor couldn't even get -- or the nurse couldn't even get
16 through it.

17 With respect to the second examination, the doctor had
18 to sedate her to do the examination.

19 And in Ms. Grinder's victim impact statement,
20 Alisha Grinder discusses the aftermath of the abuse of M.G. as
21 well.

22 She says [reading]: She was able to go for a few
23 weeks until the anxiety hit her. She started having daily
24 panic attacks. And we had to get a teacher to come to our
25 house so she could finish fourth grade. M.G. has been in and

1 out of therapy. She refuses to talk about it.

2 [Reading]: M.G. was able to go to school for fifth
3 grade, but I have to say, it's mainly due to the fact that she
4 had an amazing teacher and a very supportive administration.
5 They were incredibly supportive to both M.G. and I.

6 [Reading]: The long-lasting effects of what M.G. had
7 to endure are yet to be known.

8 To be sure the effects are yet to be known,
9 Your Honor, but there's no question that it's going to be a
10 long and challenging road ahead for M.G., as Ms. Grinder put it
11 in her statement, [reading]: M.G. is the one that got to see
12 the real side of Eric. She knew the evil. She had to endure
13 the evil. My hope is that she finds comfort and healing
14 knowing that Eric will be in jail for a very long time.

15 At least 90 years' imprisonment, a life sentence, is
16 the necessary and appropriate sentence in this case,
17 Your Honor. The defendant deserves every day of that life
18 sentence.

19 Nothing less than a sentence that keeps this defendant
20 away from children forever is just in this case, Your Honor.

21 And no number of years will be enough to rectify the
22 immense harm he "afflicted" on his own daughter and his
23 ex-wife.

24 For all these reasons, the Government asks this Court
25 to impose a sentence of at least 90 years.

1 **THE COURT:** Okay. Thank you, Mr. Riley.

2 Why don't we just -- before I start hearing from you,
3 there's a very recently raised issue of restitution.

4 If you would like to elaborate on that a little bit.
5 You've referred to counseling that the victims may have already
6 been through.

7 **MR. RILEY:** Yes, Your Honor.

8 **THE COURT:** On the other hand, this letter from
9 yesterday seems to reflect a request for counseling looking
10 forward.

11 **MR. RILEY:** Yes, Your Honor.

12 There is -- there has not been a request for expenses
13 incurred as a result of counseling in the past.

14 With respect to M.G., she is currently -- she's not
15 having to pay a co-pay. That's going to be changing shortly.

16 With respect to Ms. Grinder, she has incurred
17 out-of-pocket expenses in the past, but she's not seeking
18 reimbursement for those out-of-pocket expenses.

19 The restitution request concerns forward-looking
20 therapy.

21 And I would note, Your Honor, that the request
22 submitted is quite conservative.

23 From the Government's perspective, particularly as to
24 the minor victim, it's going to be necessary to have more than
25 four to five years of counseling for this child as a result of

1 the offense conduct.

2 If Your Honor is open to it and if there isn't consent
3 from the other side, the Government would ask this Court to
4 hold a hearing concerning restitution for an accurate
5 determination of the victim's losses.

6 **THE COURT:** Okay. Ms. Oyer, do you want to briefly
7 address that first, and then I'll hear from you.

8 **MS. OYER:** Yes, Your Honor.

9 Concerning restitution, we certainly think that
10 counseling for the victim would be a legitimate category of
11 expense that could be ordered as restitution.

12 We haven't seen documentation substantiating the costs
13 or hours yet and would want to see that before consenting to a
14 restitution order. And it's possible that we could get to a
15 place of consent.

16 With respect to cost to the mother of the victim, I am
17 not aware of legal authority that supports that as a type of
18 restitution that the Court can award.

19 I'm not saying that it's impossible, but I did a
20 little bit of research myself and did not see that that is a
21 legitimate category of restitution expense.

22 So I guess I would want to know more before consenting
23 to that. And I think we might oppose that category of expense.

24 **THE COURT:** Okay. Well, as counsel obviously are
25 aware, it is possible to defer restitution for up to 90 days,

1 so that seems like the best thing to do at this point.

2 It's perfectly reasonable that Ms. Oyer would want
3 additional time to look into this.

4 So we'll just defer restitution and counsel can confer
5 about exchanging documents and seeing if you could reach
6 agreement or not. And if not, we'll have another hearing.

7 **MR. RILEY:** Yes, Your Honor.

8 **THE COURT:** And you can let me know, Ms. Oyer,
9 whether -- if there is a need for another hearing, is that
10 something that Mr. Grinder would wish to attend or would waive
11 his -- I'm not asking you right now -- but would waive his
12 right to be present?

13 **MS. OYER:** I imagine -- I do imagine that he would
14 waive his right to be present, but I'll discuss that with him,
15 Your Honor.

16 **THE COURT:** Sure. Okay.

17 All right. I'm happy to hear from you.

18 **MS. OYER:** Your Honor, this case has had a two-year,
19 more-than-two-year lifespan at this point. And getting to this
20 day of sentencing has been a long and difficult process for
21 many reasons.

22 I don't want to rehash all of the details, as
23 Your Honor is already familiar with them.

24 But suffice it to say that, as the Court acknowledges,
25 Mr. Grinder tried to plead guilty several times, and the

1 Government made that impossible.

2 As a result, we had a three-day jury trial in January.
3 We didn't contest any of the evidence that was presented at
4 that trial. We didn't cross-examine a single witness. We
5 didn't put on any case. We didn't even dispute that they had
6 satisfied their burden of proof.

7 And we told them in advance that we weren't going to
8 be contesting the facts, and we didn't.

9 From where I sat, Your Honor, during that trial, this
10 trial felt a lot like a hanging in the public square. It felt
11 like tarring and feathering the defendant for sport.

12 The Government displayed image after image of this
13 little girl and the things that Mr. Grinder did to her. And 14
14 jurors were made to bear witness to this shame and humiliation.

15 We relived in the courtroom the lowest moments in the
16 life of Mr. Grinder and in the life of his victim. And
17 spectators were coming in and out of the courtroom to watch.

18 Participating in that proceeding was a personal and
19 professional low point for many of us.

20 The Government took the damage that Mr. Grinder caused
21 and magnified and compounded it in ways that really defy any
22 reason or logic.

23 And now, after putting everyone through this
24 gratuitous spectacle of a trial, they're standing here asking
25 Your Honor to sentence this man to 90 years in prison.

1 I am not sure what changed during the course of this
2 trial, in which we did not ask one single question of one
3 single witness, but for some reason, the Government's
4 sentencing demand has now nearly doubled.

5 Before trial, they wanted 50 years. Now they say it
6 should be 90.

7 It's hard to understand the principle that's
8 underlying this request.

9 Maybe the goal is to desensitize us all to these
10 staggeringly high sentencing numbers by continuing to push them
11 higher and higher. I don't know.

12 These are sentences that we don't see in murder cases
13 in Baltimore City, by the way. Not 50 years, certainly not 90
14 years, for a murder in the streets of Baltimore.

15 And, Your Honor, this case has caused me to reflect on
16 some remarks that were made by Judge Motz in a case that I was
17 involved in a couple of years ago.

18 It was the first case that I had handled as an
19 attorney involving this type of charge, production of
20 child pornography where the sexual abuse of a minor is
21 involved.

22 And in that case we signed a (C) plea to a number that
23 at the time seemed huge. It wasn't 90 years or even 50 years,
24 but it was decades of my client's life.

25 And it didn't go down so easily with Judge Motz.

1 Judge Motz had a lot of questions for everybody in the
2 courtroom at sentencing. He asked, Why do we treat this
3 category of case as more serious than cases involving the loss
4 of life?

5 He asked, Will there ever come a day when our society
6 looks back and asks, How could we possibly have had no better
7 way of dealing with defendants like this than locking them up
8 and throwing away the key?

9 He called it throwing lives away.

10 Judge Motz in that case really wrestled with the fact
11 that some people, for reasons we can't understand, have a
12 sexual interest in children. It's shameful in our society. We
13 find it repulsive.

14 But Judge Motz called it a problem of the human
15 condition.

16 He ultimately accepted the plea, but he said that he
17 wanted to first make sure that nobody in the courtroom would be
18 able to sleep that night without thinking about the part that
19 they had played in bringing about this unsatisfying result.

20 And I sure didn't, Your Honor. I've reflected on
21 Judge Motz's remarks in just about every case of this nature
22 that I've had since then.

23 And Judge Motz was right, we, as humans, don't know
24 how to deal with other humans who are wired this way.

25 He was also right to focus on the fact that these

1 defendants are humans.

2 There has been very little humanity in this process to
3 date, and I hope that we can bring some today.

4 The defendant in this case, sitting beside
5 Ms. Hopkins, is Eric Grinder. He's 38 years old. He is not a
6 monster. He is not an animal. He is a flawed and broken
7 human. And it was a human failing that brought him here before
8 this Court.

9 No one, Your Honor, wants to have a sexual interest in
10 children. It's shameful and disgraceful. He knows that. And
11 when acted upon as he did, it is deeply harmful to others.

12 A substantial sentence is appropriate here. We don't
13 dispute that. But we don't need to strip him of his humanity
14 in the process.

15 Your Honor has heard all about the bad in Mr. Grinder,
16 but there is good in him too, and I want to focus on those good
17 parts.

18 Mr. Grinder has been a great father to four sons.
19 They absolutely adore him, and he adores them. Even since he's
20 been in jail, he talks to them every week. He writes them
21 letters. They send him letters. They send him cards on
22 Father's Day. They wrote letters to this Court for sentencing.

23 And you can feel, in reading the letters, how much
24 those boys love him and how much they miss him.

25 Mr. Grinder's ex-wife, Heidi, is present in court

1 today. She's the mother to those four boys. And she has told
2 the Court in a letter what a great dad he is to them.

3 Since their divorce, he and Heidi have remained
4 friends. They've co-parented their boys together. And the man
5 she knows has a good heart, has a generous spirit, and is a
6 great dad to his sons.

7 Mr. Grinder also has an incredibly close bond with his
8 mother and his sister. His mother is present in court today.

9 He never knew his father, but he and his mom and his
10 sister have always been a really tight-knit family unit.

11 His mom and sister visit him every single week at the
12 jail. Every week for the last two years. They talk on the
13 phone in between almost every day. They share everything, big
14 stuff and little stuff. This is a family of people who are
15 devoted to each other.

16 Mr. Grinder was also an incredibly hard worker before
17 his arrest. He had a really good job. He was working for
18 Northrop Grumman. He had a security clearance.

19 And Mr. Grinder earned this job through hard work and
20 perseverance. He started out doing manual labor. He was a
21 welder and then a truck driver, and he kept working his way up
22 through the ranks without a college degree.

23 Mr. Grinder had a good life before this. He had a
24 good career. He had a nice home. He had a great family life.
25 And Mr. Grinder knows that all of that is lost now.

1 He knows that he has no one to blame but himself.
2 He's prepared to face the consequences of his actions, and he
3 knows that they will be severe.

4 But not 90 years in prison. The only purpose of
5 sending him away for 90 years would be to dehumanize him and to
6 throw his life away. That's not what our sentencing process is
7 for and that is not what this Court does.

8 Mr. Grinder's going to serve a substantial sentence;
9 we know that. But he should have a chance at a life on the
10 other side of that sentence. He should have a chance to hug
11 his sons again. He should have a chance to meet his
12 grandchildren. He should not die in prison.

13 We asked in our memo for a sentence of 235 months.
14 That's almost 20 years. Mr. Grinder will be nearly 60. That
15 is a sufficient sentence in this case. That's enough time to
16 pay his debt to society. It's enough time to receive
17 treatment. It's enough time to deter future criminal conduct.

18 And after that, he'll be on supervised release
19 probably for the rest of his life. He'll be under very strict
20 supervision; and in that environment, there will be a very low
21 likelihood of recidivism.

22 Your Honor, there is a victim in this case who
23 suffered very real injuries, and we can't lose sight of that.

24 But we also can't lose sight of the humanity of
25 Mr. Grinder.

1 We ask the Court in sentencing him to consider the
2 good along with the bad, and we ask the Court to impose a
3 sentence that will give him a chance at a life on the other
4 side.

5 Thank you.

6 **THE COURT:** Thank you very much. Thank you, Ms. Oyer.
7 And these are very difficult cases.

8 Mr. Grinder, if there is anything that you would like
9 to say before I make a final decision, you have the right to do
10 that. You don't have to. I won't hold it against you if you
11 don't. But you have the right to speak if you'd like to.

12 **THE DEFENDANT:** I'd like to.

13 I'd first like to apologize to the Court for hearing
14 this very difficult case.

15 I'd also like to apologize to my family. There are no
16 words that make any of this any easier. Every one of you
17 stayed by my side. I will always be grateful.

18 Heidi, thank you for taking care of my boys. I am,
19 and always will be, very proud of them.

20 I know I don't speak to Alisha about M.G., but I hope
21 they're both doing okay.

22 In March 2017, I spent a night with Alisha and asked
23 her what she wanted me to do. She told me to take
24 responsibility for my actions. I've tried to do that the best
25 I know how.

1 I pray to God all the time to give me the pain and
2 hurt that her and M.G. share.

3 Hopefully one day I can earn her forgiveness.

4 Despite what you may think, I will always love them
5 both very much.

6 No one wants to spend two years in jail, but during
7 that time, I've really learned a lot about myself.

8 My actions have affected and damaged everyone I care
9 about.

10 I've already missed milestones in my children's lives.
11 And now I'm begging the Court for leniency so I won't miss my
12 children's whole lives.

13 Your Honor, please have mercy on me.

14 I can't change the past, but I hope you give me a
15 chance of redemption in my future.

16 **THE COURT:** Thank you. Thank you, Mr. Grinder.

17 Let me just also -- while I'm thinking about it, there
18 obviously is going to be a period of a lifetime of supervised
19 release following whatever the sentence is.

20 My recollection is that there is just a couple of
21 conditions that the defense wanted to address.

22 Ms. Hopkins.

23 **MS. HOPKINS:** Yes, Your Honor. There were two of
24 them.

25 The first one is that the proposed condition that

1 Mr. Grinder not be able to have any contact with any child he
2 knows or should know is under the age of 18. And this
3 condition is overbroad.

4 I think the real concern here is that Mr. Grinder
5 would be released from prison and not be able to have a
6 relationship with his future grandchildren. Or potentially his
7 sister one day may have children.

8 So what we would ask for is the same thing that
9 Your Honor did recently in Mr. Ekwonna's case, which would be
10 to allow Mr. Grinder to have contact with the children of
11 immediate family members.

12 The other condition that we have objected to is the
13 one that he may not go to any place where he knows children
14 under the age of 18 are likely to be. And this condition is
15 also overbroad. It's vague. It's unnecessary. It's not clear
16 where he would be allowed to go.

17 And he could be going to these places to engage in
18 perfectly lawful activities that we all engage in in our
19 everyday lives.

20 So -- and I believe this Court as well in
21 Mr. Ekwonna's case recently did not impose this condition.

22 So we're asking for both of these conditions not to be
23 imposed.

24 **THE COURT:** Okay. And you're particularly concerned
25 about, of course, at this point, Mr. Grinder has four sons.

1 Does he have, at this point, any nieces or nephews?

2 **MS. HOPKINS:** No, he does not.

3 **THE COURT:** Okay.

4 **MR. RILEY:** I think that's not accurate, Your Honor.
5 He has at least one niece.

6 **MS. HOPKINS:** He has one niece and nephew. My
7 mistake.

8 **THE COURT:** Okay. All right. Does the Government
9 want to be heard?

10 **MR. RILEY:** Your Honor, the Government's happy to
11 submit on our papers on these issues.

12 **THE COURT:** Okay. All right. Well, first of all, I
13 do agree that the blanket prohibition against going to any
14 place where you know children under the age of 18 are likely to
15 be -- including parks, schools, playgrounds, and childcare
16 facilities -- sweeps much too broadly. It's vague. It would
17 be very hard to interpret. There are a number of protected
18 reasons why someone might go to those kind of facilities.

19 And I think that the purpose of that is adequately
20 addressed by the earlier provision about not having direct
21 contact with any child under 18 without the permission of the
22 probation officer other than incidental, ordinary daily
23 activities.

24 And I'm willing to make the same change, the change
25 that's requested.

1 Okay. I was going to say about "except your own
2 children." Now, there should be something in here -- and
3 perhaps I'm just missing it -- that there should not -- unless
4 there's going to be consent, which I think is unlikely, that
5 there should not be any contact with the victim.

6 **MR. RILEY:** Correct, Your Honor. She is still one of
7 his children.

8 **THE COURT:** Right.

9 **MS. HOPKINS:** And that condition is already in there.
10 We have not objected to that one.

11 **THE COURT:** Sure. And I'm not seeing it in the list
12 in the presentence report, which is at Page 24 to 25. Perhaps
13 it was in your papers somewhere. Maybe I missed it.

14 **THE PROBATION OFFICER:** In reference to the victim, it
15 should be the very first condition listed.

16 **THE COURT:** Ah. Of course. Thank you.

17 And in making that change, that it would be "except
18 for your own children" -- other than the victim or those of
19 close family members that obviously will always be up to the
20 particular family member whether they want that contact. But
21 if, for example, Mr. -- and I realize this is something
22 Mr. Grinder and his children will make their own decision
23 about, whether they would visit him or whether he would want
24 them to visit him while he's locked up.

25 But I don't think that we need to include his children

1 in that paragraph as long as we've protected the victim.

2 Okay. Other than that, I think we're in agreement on
3 all the conditions, Pages 24 and 25 in the presentence report,
4 so I don't need to read them all into the record.

5 Is that satisfactory?

6 **MR. RILEY:** Yes, Your Honor.

7 **MS. HOPKINS:** Yes, Your Honor.

8 **THE COURT:** Okay. I'm going to take about a 15-minute
9 recess.

10 But is there anything else anybody wants to say before
11 I do that?

12 **MR. RILEY:** No, Your Honor.

13 **MS. OYER:** No, Your Honor. Thank you.

14 **THE COURT:** Okay. Thank you.

15 (10:33 a.m.)

16 (Recess taken.)

17 (11:08 a.m.)

18 **THE COURT:** You can be seated, please.

19 Thank you for your patience. Obviously a lot to
20 consider.

21 Conference at the bench.

22 (It is the policy of this court that every guilty plea and
23 sentencing proceeding include a bench conference concerning
24 whether the defendant is or is not cooperating.)

25 **THE COURT:** All right. Let me start by saying that in

1 many respects, I agree with a lot of what Ms. Oyer had to say.

2 I don't think this is going to be a surprise. I do
3 not understand why the Government took the approach that it did
4 in this case of insisting on a public trial before a jury.

5 I don't understand why they felt it was necessary to
6 attack Mr. Grinder as though he were seeking to defend himself
7 factually on these charges.

8 And I don't understand why an office that I think
9 reasonably seeks or agrees to 30-, 35-, 40-year sentences for
10 people who have committed murder would insist on a life
11 sentence for Mr. Grinder.

12 Is it a serious offense? Of course. This is
13 extremely serious. This is reprehensible. It is hard to
14 fathom how someone could abuse a young child in the way
15 Mr. Grinder did.

16 It is, of course, a betrayal of trust at many levels.
17 Most importantly, the trust that a daughter should be able to
18 place in her father.

19 He should have protected her. Instead, he not only
20 abused her, but took pictures of that abuse over months and
21 possibly years.

22 The impact on the victim absolutely is life-changing.
23 It is something that she will have to deal with, the abuse, the
24 abuse of trust for many years.

25 There is a serious aggravating factor to this, I

1 think, in the witness tampering and the conviction for witness
2 tampering, which was also very serious.

3 While I have found and agree and appreciate that
4 eventually Mr. Grinder did accept -- was willing to accept
5 factual responsibility, there were initially efforts to get the
6 victim to change her testimony and even a suggestion of harm to
7 other family members.

8 On the other hand, always in sentencing it is
9 important to recall that the defendant is, in fact, a human
10 being, flawed as he may be.

11 I am not going to pretend to be as eloquent as
12 Judge Motz, but I share many of his concerns.

13 Mr. Grinder needs to be deterred. The public and his
14 victim need to be protected from him. But we also need to
15 think about what brought him to this place where he has lost
16 almost everything -- through his own actions, of course, and
17 he's responsible for that.

18 Now, the guidelines obviously put us in a position of
19 a life sentence.

20 I did apply 4B1.5, and I did not group, based on my
21 review of the case law and the actual language.

22 But I do also agree with the defense that the
23 cumulative impact of what is essentially a ten-level
24 enhancement between the two of those things is more of an
25 increase than is justified to what are already, probably

1 appropriately, very high guidelines. It was one victim and one
2 course of conduct, although it's separate harms, which I agree
3 with.

4 So I think a variance is justified for reasons that I
5 have stated and also including avoiding unwanted sentencing
6 disparities.

7 I've reviewed a lot of reported cases in connection
8 with the guideline issues. I've obviously also had some
9 experience in this district. I have not seen a lot of life
10 sentences -- either in this district or in other reported
11 cases -- for this kind of conduct, bad as it is.

12 The goals of protecting the public and trying to
13 prevent recidivism on Mr. Grinder's part are also served by the
14 fact of a lifetime of supervised release, which we have
15 discussed.

16 So there needs to be a sentence that is enough
17 certainly to deter Mr. Grinder; sufficient to protect the
18 victim and the public; and sufficient to recognize how serious
19 an offense this is.

20 I believe that, with some variance from the
21 guidelines, based on the effect of those two enhancements --
22 and also with my belief that the sentence I'm about to impose
23 is appropriate, regardless of my calculations and errors one
24 way or the other, if there are any on the guidelines -- the
25 sentence -- and it will be separately and has to be somewhat

1 different on each count -- is going to be for a total of
2 30 years in the custody of the Bureau of Prisons.

3 That is a 30-year sentence on Counts 1, 2, 3, 4, 5,
4 and 6.

5 That is a sentence of 20 years, which is the maximum,
6 on 7 and 8 and 9.

7 There will be a lifetime of supervised release with
8 the conditions that we have already specified.

9 There is a required \$100 special assessment on each
10 count that I am imposing.

11 I don't believe Mr. Grinder's financial circumstances
12 permit a fine.

13 And I don't know that anyone -- have we specifically
14 addressed the additional \$5,000 assessment that applies in some
15 instances on each count?

16 **MR. RILEY:** We haven't addressed that, Your Honor.

17 **THE COURT:** I'm not sure.

18 **MR. RILEY:** But if the defendant has -- doesn't have
19 the ability to pay, that -- I don't think -- if you make that
20 finding, then it's not applicable.

21 **THE COURT:** If it would otherwise be applicable, I am
22 making that finding that he is not in a position to pay that
23 fine either.

24 I will be deferring restitution, as we earlier
25 indicated.

1 And I'm happy to listen to any recommendations the
2 defense might want to make regarding to the Bureau of Prisons.

3 **MS. OYER:** Your Honor, we'd like to request that the
4 Court recommend that the Bureau of Prisons designate
5 Mr. Grinder to FCI Petersburg in Virginia and that he is
6 recommended for drug and alcohol treatment in the Bureau of
7 Prisons.

8 **THE COURT:** I'm happy to make both of those
9 recommendations.

10 **MS. OYER:** Thank you, Your Honor.

11 **THE COURT:** Anything I have not addressed? Anything I
12 have left out?

13 **MR. RILEY:** Just an order of forfeiture for the Court
14 that I believe is on the bench.

15 **THE COURT:** Thank you.

16 I have an order of forfeiture in front of me for
17 certain specific property, being the Toshiba computer and the
18 Samsung smartphone.

19 I assume there's no objection from the defense?

20 **MS. OYER:** There is not, Your Honor.

21 **MR. RILEY:** Your Honor, the Government would move to
22 dismiss the original indictment, as well as the first and the
23 second superseding indictments at this time.

24 **THE COURT:** Those are dismissed.

25 Other than that, Mr. Grinder, you have the right to

1 appeal, and I assume that your counsel will assist you in that.
2 And any appeal needs to be noted within 14 days.

3 All right. Thank you, all.

4 (Matter concluded at 11:16 a.m.)
5
6
7

8 I, Douglas J. Zweizig, RDR, CRR, FCRR, do hereby certify
9 that the foregoing is a correct transcript from the
10 stenographic record of proceedings in the above-entitled
11 matter.

12 _____
13 /s/

14 Douglas J. Zweizig, RDR, CRR, FCRR
15 Registered Diplomat Reporter
16 Certified Realtime Reporter
17 Federal Official Court Reporter
18 DATE: June 5, 2019
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Douglas J. Zweizig, RDR, CRR - Federal Official Court Reporter

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